

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

AUG 5 2002

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES CALVIN PEELE

Application No. 09/317,480

ORDER REMANDING TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on July 19, 2002. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On page 3 of the Examiner's Answer mailed April 1, 2002 (Paper No. 14), the examiner listed the following references under the heading "(9) Prior Art of Record";

6,047,186	Yu, et al.	4-2000
5,809,423	Benveniste	9-1998

It is noted that the Borst et al. and Przelomiec references cited on pages 4 and 7 of the Examiner's Answer under the heading "(10) Grounds of Rejection" are not included as "Prior Art of Record." In accordance with § 1211 of the Manual of Patent Examining Procedure (MPEP) (7th Ed., Rev. 1, Feb. 2000), clarification is required regarding the pertinence of the Borst et al. And Przelomiec references. In addition, MPEP § 1208(A)(9) states:

(A) REQUIREMENTS FOR EXAMINER'S ANSWER.
The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . .

(9) References of Record. A listing of the references of record relied on, and, in the case of nonpatent references, the relevant page or pages.

If appropriate, compliance with MPEP § 1208(A)(9) is required in listing the Borst et al. and Przelomiec references under the

Application 09/317,480

heading "Prior Art of Record" appearing in the Examiner's Answer mailed April 1, 2002 (Paper No. 14).

In addition, on January 16, 2002, appellant filed a communication entitled "Response to Advisory Action of September 10, 2001" (Paper No. 13). There is no indication in the record regarding the status of the this paper.

Accordingly, it is

ORDERED that the application is returned to the examiner:

1. for clarification under MPEP § 1211 regarding the pertinence of the Borst et al. & Przelomiec references listed on pages 4 and 7 of the Examiner's Answer (Paper No. 14);

2. if appropriate, for compliance with MPEP § 1208(A)(9) by listing the Borst et al. and Przelomiec references in a Supplemental Examiner's Answer under the heading "References of Record";

3. for notification to appellant regarding the status of the "Response to Advisory Action of September 10, 2001" filed January 16, 2002 (Paper No. 13); and

Application 09/317,480

4. for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

DALE SHAW

Program and Resource Administrator
(703) 308-9797

DS:psb

cc: David E. Bennett
Rhodes Coats & Bennett LLP
P.O. Box 5
Raleigh, NC 27602

ds/psb/lrc
RA020111